

AMENDED IN ASSEMBLY JANUARY 17, 2006

AMENDED IN SENATE MARCH 17, 2005

**SENATE BILL**

**No. 169**

**Introduced by Senator Migden**

February 9, 2005

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~~An act to amend Sections 25373 and 37361 of the Government Code, relating to historic preservation. An act to amend Section 1246 of the Business and Professions Code, relating to healing arts, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 169, as amended, Migden. ~~Historic preservation: Saint Brigid Church. Certified phlebotomy technicians.~~

*Existing law requires an unlicensed person employed by a licensed clinical laboratory who performs venipuncture or skin puncture to be certified as a certified phlebotomy technician. However, existing law requires an unlicensed person who performs venipuncture or skin puncture who was employed by a clinical laboratory for the purposes of withdrawing blood or for clinical laboratory tests on or before April 2003, to comply with the certification requirement by April 2006.*

*This bill would extend the date for compliance with that certification requirement to January 1, 2007.*

*This bill would declare that it is to take effect immediately as an urgency statute.*

~~Existing law authorizes cities and counties to acquire property for the purpose of developing or preserving a historical landmark, or for the purpose of developing recreational facilities and further authorizes cities and counties to enact, by ordinance, special conditions or~~

regulations for the purpose of protecting places, buildings, and objects of special historical or cultural value.

~~Existing law also exempted, until January 1, 1995, noncommercial property owned by specified religiously affiliated associations or corporations from any special condition or regulation enacted by ordinance, if the association or corporation objects to the application of the special condition or regulation, and the association or corporation makes specified determinations in a public forum. Existing law also requires that these provisions do not infringe on the authority of a city or county to enforce special conditions and regulations on any property designated pursuant to these provisions prior to January 1, 1994.~~

~~This bill would require that these provisions do not apply to the Saint Brigid Church located at 2151 Van Ness Avenue within the City and County of San Francisco.~~

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1246 of the Business and Professions  
2     Code is amended to read:

3     1246. (a) Except as provided in subdivisions (b) and (c), and  
4     in Section 23158 of the Vehicle Code, an unlicensed person  
5     employed by a licensed clinical laboratory may perform  
6     venipuncture or skin puncture for the purpose of withdrawing  
7     blood or for clinical laboratory test purposes upon specific  
8     authorization from a licensed physician and surgeon provided  
9     that he or she meets both of the following requirements:

10    (1) He or she works under the supervision of a person licensed  
11    under this chapter or of a licensed physician and surgeon or of a  
12    licensed registered nurse. A person licensed under this chapter, a  
13    licensed physician or surgeon, or a registered nurse shall be  
14    physically available to be summoned to the scene of the  
15    venipuncture within five minutes during the performance of  
16    those procedures.

17    (2) He or she has been trained by a licensed physician and  
18    surgeon or by a clinical laboratory bioanalyst in the proper  
19    procedure to be employed when withdrawing blood in  
20    accordance with training requirements established by the State

Department of Health Services and has a statement signed by the instructing physician and surgeon or by the instructing clinical laboratory bioanalyst that such training has been successfully completed.

(b) (1) On and after the effective date of the regulations specified in paragraph (2), any unlicensed person employed by a clinical laboratory performing the duties described in this section shall possess a valid and current certification as a ~~“certified~~ *certified phlebotomy—technician” technician* issued by the department. However, an unlicensed person employed by a clinical laboratory to perform these duties pursuant to subdivision (a) on that date shall comply with this requirement by ~~April 2006, which is three years from the effective date of those regulations~~ *January 1, 2007*.

(2) The department shall adopt regulations for certification by January 1, 2001, as a ~~“certified~~ *certified phlebotomy—technician” technician* that shall include all of the following:

(A) The applicant shall hold a valid, current certification as a phlebotomist issued by a national accreditation agency approved by the department, and shall submit proof of that certification when applying for certification pursuant to this section.

(B) The applicant shall complete education, training, and experience requirements as specified by regulations that shall include, but not be limited to, the following:

- (i) At least 40 hours of didactic instruction.
- (ii) At least 40 hours of practical instruction.
- (iii) At least 50 successful venipunctures.

However, an applicant who has been performing these duties pursuant to subdivision (a) may be exempted from the requirements specified in clauses (ii) and (iii), and from 20 hours of the 40 hours of didactic instruction as specified in clause (i), if he or she has at least 1,040 hours of work experience, as specified in regulations adopted by the department.

It is the intent of the Legislature to permit persons performing these duties pursuant to subdivision (a) to use educational leave provided by their employers for purposes of meeting the requirements of this section.

(3) Each ~~“certified~~ *certified phlebotomy—technician” technician* shall complete at least three hours per year or six hours every two years of continuing education or training. The

1 department shall consider a variety of programs in determining  
2 the programs that meet the continuing education or training  
3 requirement.

4 (4) He or she has been found to be competent in phlebotomy  
5 by a licensed physician and surgeon or person licensed pursuant  
6 to this chapter.

7 (5) He or she works under the supervision of a licensed  
8 physician and surgeon, licensed registered nurse, or person  
9 licensed under this chapter, or the designee of a licensed  
10 physician and surgeon or the designee of a person licensed under  
11 this chapter.

12 (6) The department shall adopt regulations establishing  
13 standards for approving training programs designed to prepare  
14 applicants for certification pursuant to this section. The standards  
15 shall ensure that these programs meet the state's minimum  
16 education and training requirements for comparable programs.

17 (7) The department shall adopt regulations establishing  
18 standards for approving national accreditation agencies to  
19 administer certification examinations and tests pursuant to this  
20 section.

21 (8) The department shall charge fees for application for and  
22 renewal of the certificate authorized by this section of no more  
23 than twenty-five dollars (\$25).

24 (c) (1) (A) A ~~“certified certified phlebotomy technician”~~  
25 *technician* may perform venipuncture or skin puncture to obtain  
26 a specimen for nondiagnostic tests assessing the health of an  
27 individual, for insurance purposes, provided that the technician  
28 works under the general supervision of a physician and surgeon  
29 licensed under Chapter 5 (commencing with Section 2000). The  
30 physician and surgeon may delegate the general supervision  
31 duties to a registered nurse or a person licensed under this  
32 chapter, but shall remain responsible for ensuring that all those  
33 duties and responsibilities are properly performed. The physician  
34 and surgeon shall make available to the department, upon  
35 request, records maintained documenting when a certified  
36 phlebotomy technician has performed venipuncture or skin  
37 puncture pursuant to this paragraph.

38 (B) As used in this paragraph, general supervision requires the  
39 supervisor of the technician to determine that the technician is  
40 competent to perform venipuncture or skin puncture prior to the

1 technician's first blood withdrawal, and on an annual basis  
2 thereafter. The supervisor is also required to determine, on a  
3 monthly basis, that the technician complies with appropriate  
4 venipuncture or skin puncture policies and procedures approved  
5 by the medical director and required by state regulations. The  
6 supervisor, or another designated licensed physician and surgeon,  
7 registered nurse, or person licensed under this chapter, shall be  
8 available for consultation with the technician, either in person or  
9 through telephonic or electronic means, at the time of blood  
10 withdrawal.

11 (2) (A) Notwithstanding any other provision of law, a person  
12 who has been issued a ~~“certified~~ *certified* phlebotomy  
13 ~~technician”~~ *technician* certificate pursuant to this section may  
14 draw blood following policies and procedures approved by a  
15 physician and surgeon licensed under Chapter 5 (commencing  
16 with Section 2000), appropriate to the location where the blood is  
17 being drawn and in accordance with state regulations. The blood  
18 collection shall be done at the request and in the presence of a  
19 peace officer for forensic purposes in a jail, law enforcement  
20 facility, or medical facility, with general supervision.

21 (B) As used in this paragraph, “general supervision” means  
22 that the supervisor of the technician is licensed under this code as  
23 a physician and surgeon, physician assistant, clinical laboratory  
24 bioanalyst, registered nurse, or clinical laboratory scientist, and  
25 reviews the competency of the technician before the technician  
26 may perform blood withdrawals without direct supervision, and  
27 on an annual basis thereafter. The supervisor is also required to  
28 review the work of the technician at least once a month to ensure  
29 compliance with venipuncture policies, procedures, and  
30 regulations. The supervisor, or another person licensed under this  
31 code as a physician and surgeon, physician assistant, clinical  
32 laboratory bioanalyst, registered nurse, or clinical laboratory  
33 scientist, shall be accessible to the location where the technician  
34 is working to provide onsite, telephone, or electronic  
35 consultation, within 30 minutes when needed.

36 (d) The department may adopt regulations providing for the  
37 issuance of a certificate to an unlicensed person employed by a  
38 clinical laboratory authorizing only the performance of skin  
39 punctures for test purposes.

1     *SEC. 2. This act is an urgency statute necessary for the*  
2     *immediate preservation of the public peace, health, or safety*  
3     *within the meaning of Article IV of the Constitution and shall go*  
4     *into immediate effect. The facts constituting the necessity are:*

5     *In order for the residents of the state to avoid confronting*  
6     *delays in laboratory testing due to a shortage of certified*  
7     *phlebotomy technicians, it is necessary that this act take effect*  
8     *immediately.*

9     ~~SECTION 1. Section 25373 of the Government Code is~~  
10    ~~amended to read:~~

11    ~~25373. (a) The board of supervisors may acquire property for~~  
12    ~~the preservation or development of a historical landmark. The~~  
13    ~~board of supervisors may also acquire property for development~~  
14    ~~for recreational purposes and for development of facilities in~~  
15    ~~connection therewith.~~

16    ~~(b) The board may, by ordinance, provide special conditions~~  
17    ~~or regulations for the protection, enhancement, perpetuation, or~~  
18    ~~use of places, sites, buildings, structures, works of art and other~~  
19    ~~objects having a special character or special historical or~~  
20    ~~aesthetic interest or value. These special conditions and~~  
21    ~~regulations may include appropriate and reasonable control of the~~  
22    ~~appearance of neighboring private property within public view.~~

23    ~~(c) Until January 1, 1995, subdivision (b) shall not apply to~~  
24    ~~noncommercial property owned by a religiously affiliated~~  
25    ~~association or corporation not organized for private profit,~~  
26    ~~whether incorporated as a religious or public benefit corporation,~~  
27    ~~unless the owner of the property does not object to its~~  
28    ~~application. Nothing in this subdivision shall be construed to~~  
29    ~~infringe on the authority of the board of supervisors to enforce~~  
30    ~~special conditions and regulations on any property designated~~  
31    ~~prior to January 1, 1994.~~

32    ~~(d) Subdivision (b) shall not apply to noncommercial property~~  
33    ~~owned by any association or corporation that is religiously~~  
34    ~~affiliated and not organized for private profit, whether the~~  
35    ~~corporation is organized as a religious corporation, or as a public~~  
36    ~~benefit corporation, provided that both of the following occur:~~

37    ~~(1) The association or corporation objects to the application of~~  
38    ~~the subdivision to its property.~~

39    ~~(2) The association or corporation determines in a public~~  
40    ~~forum that it will suffer substantial hardship, which is likely to~~

1 ~~deprive the association or corporation of economic return on its~~  
2 ~~property, the reasonable use of its property, or the appropriate~~  
3 ~~use of its property in the furtherance of its religious mission, if~~  
4 ~~the application is approved.~~

5 ~~(e) Nothing in this subdivision shall be construed to infringe~~  
6 ~~on the authority of any legislative body to enforce special~~  
7 ~~conditions and regulations on any property designated prior to~~  
8 ~~January 1, 1994, or to authorize any legislative body to override~~  
9 ~~the determination made pursuant to paragraph (2) of subdivision~~  
10 ~~(d).~~

11 ~~(f) Nothing in subdivisions (e) and (d) of this section shall~~  
12 ~~apply to the property known as the Saint Brigid Church located at~~  
13 ~~2151 Van Ness Avenue within the City and County of San~~  
14 ~~Francisco.~~

15 ~~SEC. 2. Section 37361 of the Government Code is amended~~  
16 ~~to read:~~

17 ~~37361. (a) The legislative body may acquire property for the~~  
18 ~~preservation or development of a historical landmark. The~~  
19 ~~legislative body may also acquire property for development for~~  
20 ~~recreational purposes and for development of facilities in~~  
21 ~~connection therewith.~~

22 ~~(b) The legislative body may provide for places, buildings,~~  
23 ~~structures, works of art, and other objects, having a special~~  
24 ~~character or special historical or aesthetic interest or value,~~  
25 ~~special conditions or regulations for their protection,~~  
26 ~~enhancement, perpetuation or use, which may include~~  
27 ~~appropriate and reasonable control of the use or appearance of~~  
28 ~~neighboring private property within public view, or both.~~

29 ~~(c) Until January 1, 1995, subdivision (b) shall not apply to~~  
30 ~~noncommercial property owned by a religiously affiliated~~  
31 ~~association or corporation not organized for private profit,~~  
32 ~~whether incorporated as a religious or public benefit corporation,~~  
33 ~~unless the owner of the property does not object to its~~  
34 ~~application. This subdivision does apply to a charter city.~~  
35 ~~Nothing in this subdivision shall be construed to infringe on the~~  
36 ~~authority of the legislative body to enforce special conditions and~~  
37 ~~regulations on any property designated prior to January 1, 1994.~~  
38 ~~Subdivision (b) shall not apply to noncommercial property~~  
39 ~~owned by any association or corporation that is religiously~~  
40 ~~affiliated and not organized for private profit, whether the~~

1 corporation is organized as a religious corporation, or as a public  
2 benefit corporation, provided that both of the following occur:

3 (1) The association or corporation objects to the application of  
4 the subdivision to its property.

5 (2) The association or corporation determines in a public  
6 forum that it will suffer substantial hardship, which is likely to  
7 deprive the association or corporation of economic return on its  
8 property, the reasonable use of its property, or the appropriate  
9 use of its property in the furtherance of its religious mission, if  
10 the application is approved.

11 (d) Nothing in this subdivision shall be construed to infringe  
12 on the authority of any legislative body to enforce special  
13 conditions and regulations on any property designated prior to  
14 January 1, 1994, or to authorize any legislative body to override  
15 the determination made pursuant to paragraph (2) of subdivision  
16 (e). This subdivision shall apply to a charter city.

17 (e) Nothing in subdivision (c) of this section shall apply to the  
18 Saint Brigid Church located at 2151 Van Ness Avenue within the  
19 City and County of San Francisco.

20 SEC. 3. Due to the unique circumstances facing the Saint  
21 Brigid Church within the City and County of San Francisco  
22 relating to its possible closure, the Legislature hereby finds and  
23 declares that a general statute cannot be made applicable within  
24 the meaning of Section 16 of Article IV of the California  
25 Constitution. Therefore, the special legislation contained within  
26 Sections 1 and 2 of this act are necessarily applicable only to the  
27 Saint Brigid Church within the City and County of San  
28 Francisco.